

Message

From: Wandling, Jason E [Jason.E.Wandling@wv.gov]
Sent: 11/18/2019 6:43:46 PM
To: Stein, Jonathan [Stein.Jonathan@epa.gov]
Subject: FW: 19-07 EQB
Attachments: Exh 1 19-0404 11-7-19.pdf

From: Ex. 6 Personal Privacy (PP)

Sent: Thursday, November 7, 2019 2:28 PM

To: Shultz, Jackie D <Jackie.D.Shultz@wv.gov>; Ward, Harold D <Harold.D.Ward@wv.gov>; Wandling, Jason E <Jason.E.Wandling@wv.gov>; Chris Hunter <chunter@jacksonkelly.com>; Himanshu Vyas <vyas.himanshu@epa.gov>
Subject: Re: 19-07 EQB

Exhibit 1 is attached

On Thursday, November 7, 2019, 02:18:37 PM EST, Ex. 6 Personal Privacy (PP) wrote:

WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD
CHARLESTON, WEST VIRGINIA

Ex. 6 Personal Privacy (PP)

Appellant,

**v. Harold
Ward,
eal No. 19-07 EQB**

App

**Deputy Secretary for Operations, Division of
Water and Waste Management
DEPARTMENT OF
ENVIRONMENTAL PROTECTION,**

Mountaineer Gas Company.

Appellee.

MOTION SEEKING JUDICIAL REVIEW

**MOTION TO SET ASIDE ORDER GRANTING MOUNTAINEER GAS' MOTION TO
DISMISS APPEAL**

MOTION TO PROCEED WITH PREVIOUS SCHEDULED HEARING

Now comes Ex. 6 Personal Privacy (PP) Appellant, and motions the Environmental Quality Board ("EQB") to review the EQB order dated October 17, 2019 granting Mountaineer Gas' motion to dismiss appeal and motion to set aside order granting Mountaineer Gas' motion to dismiss appeal and motion to proceed with previous scheduled hearing.

Appellant will first state the errors of the EQB to even have a closed door meeting on September 12, 2019 and second the errors that the West Virginia Department of Environmental Protect ("WVDEP") and Mountaineer Gas and the EQB continued to deny the Appellant the constitutional and judicial previsions required by law with legislation intent to wit:

(1) The EQB failed to respond to Appellant's motions. Approximately eleven (11) different motions and requests have been filed. Requests of which the relief sought that the EQB has the authority to ensure, the only purpose of the DEP, and their permits is to protect the environment. The EQB even failed to address Appellant's original appeal.

(2) The EQB failed to address Appellant's motions before having a back-door meeting to grant Mountaineer Gas' motion to dismiss when in fact, the WVDEP never responded to the Appellant's response to Mountaineer Gas' motion to dismiss. This permit is to be the authority of the WVDEP, not controlled by Mountaineer Gas.

(3) The EQB failed to address Mountaineer Gas' July 26, 2019 supplement motion to dismiss claiming the appeal was moot. The Department of Environmental Protection ("DEP") has filed additional violations on this permit to Mountaineer Gas and final approval won't be until summer of 2020. The WVDEP and Mountaineer Gas failed to respond to Appellant's response of mootness. The WVDEP has yet to respond to any of the Appellant's motions and or response to Mountaineer Gas' arguments. The EQB has failed to hold a hearing so Appellant could have the opportunity to present find of facts and conclusion of law. This is a Constitutional Due Process violation.

(4) Within the background portion of the October 17, 2019 order, page 4, first paragraph, the following quote: "Therefore, the Appellant's motion to postpone the Board's deliberation is denied." The Appellant has no record of the above listed denial before the Board's September 12, 2019 meeting and failed to address any of Appellant's motions. This is a Due Process violation.

(5) Appellant is confused how the EQB could rule on Appellant's motion of August 1, 2019 and grant a December 12-13, 2019 hearing. If the Appellee's motion to dismiss (May 7, 2019) and a supplement motion of July 26, 2019 of moot to dismiss with no action taken. The EQB lost their authority to act on the motion to dismiss or any supplement motion to dismiss by setting the docket on October 16, 2019 (Exhibit 1).

(6) Still within the background portion of the above listed order it appears the EQB is putting the cart before the horse by making an order "Thereafter, on September 12, 2019, a quorum of the Board met via teleconference to deliberate on Mountaineer's Motion to Dismiss.", then making

argument how the EQB have determine their decision, with a footnote (2) *"The Board shall not address whether Appellant has "standing" or whether the appeal is now "moot".*". *"Standing"* and *"moot"* are the only things the EQB is required to address. This is why the EQB set prehearing conference for November 21, 2019 and an evidentiary hearing on December 12-13, 2019 confirmed from an e-mail dated Oct 16, 2019. (Exhibit 1).

(7) The EQB states *"...authority under W. Va. §22B-1 et seq., to meet and consider motions and to subsequence issue orders. Therefore, the Appellant's motion to postpone the Board's deliberation is denied."* The Appellant's motion for continuance was granted on August 5, 2019 and at the same time the EQB scheduled hearings for December 12-13, 2019. The EQB's order does not reflect the previous order granting the continuance. The EQB is required to have a hearing before dismissing an appeal.

(8) The EQB claims the Appellant has not engaged in any discovery as listed in the order of October 17, 2019. The Appellant has been steadily working on additional information to present to the EQB by reviewing records of other agencies since the WVDEP and Mountaineer Gas refuses to respond. Appellant filed a FIOA to the Public Service Commission ("PSC") and found a treasure trove of information and filed an official complaint with the PSC to challenge Mountaineer Gas's business practices of installing and failing to maintain these operations in accordance with the PSC order of December 21, 2018 (Case# 18-115-G-390P). On October 24, 2019 the PSC ordered Case# 19-1057-G-C was granted. The PSC within the December 21, 2018 case order required Mountaineer Gas to do a better job to ensure the environmental status of the lines and operation. PSC's order states:

"Karst is just one of several risks that Mountaineer must consider and mitigate, such as, soil types, areas of hill, steep slopes and the potential for heavy rains and flooding in formulating the design and routing of natural gas pipeline. The Commission requires Mountaineer to construct and operate its system in a safe manner and to mitigate threats to its pipelines and the areas served. That ongoing obligation applies equally to the construction and operation of new gas infrastructure facilities in the Eastern Panhandle."

(9) Within the discussion portion of the above order, the order States *"The Board, in its administrative discretion, and in the interests of fairness and justice, may rule on motions which tend to regulate the course of hearing, simplify the issues, and dispose of procedural requests or similar matters."* A footnote is worded *"The Board shall not address whether Appellant has "standing" or whether the appeal is now "moot."* There is no fairness and or justice having closed door meetings and making decisions *"for failure to state a claim"* ignoring the requirements of *"standing or moot"* presented in briefs to the EQB. With the EQB setting a prehearing on November 21, 2019 and an evidentiary hearing on December 12-13, 2019. (Exhibit 1).

(10) On page 5, section 1 *"Appellant's objections related to public comment on Mountaineer's Registration fail to state or establish a claim upon which relief can be granted."* The only focus of the EQB is to dismiss this appeal, a claim upon which *"no relief can be granted"*. The relief sought was to have the February 25, 2019 hearing as scheduled and put a stop workorder on the permit and to protect the environment and safety of the public.

Public notice was given on January 25, 2019 with a public hearing scheduled for February 25, 2019. The EQB failed to note the concerns of the cancellation of the February 25, 2019 hearing. Stop workorder is within the EQB's authority. The only problem is the WVDEP and the EQB work at the pleasure of the Governor, not the residents/taxpayers of the State of West Virginia. A stop workorder is not in the best interest of the WVDEP and Mountaineer Gas. The EQB continues to violate Appellant's Constitutional Rights of Due Process to have a hearing.

(11) On page 7, section 2 *"Appellant's objection regarding the Madison Cave Isopod failed to state or establish a claim upon which relief can be granted."* Mountaineer Gas' own studies required additional time to study the impact, up to one year, on the Madison Cave Isopod. In conjuncture with the PSC order Case# 18-115-G-390P December 21, 2018

“Karst is just one of several risks that Mountaineer must consider and mitigate, such as, soil types, areas of hill, steep slopes and the potential for heavy rains and flooding in formulating the design and routing of natural gas pipeline. The Commission requires Mountaineer to construct and operate its system in a safe manner and to mitigate threats to its pipelines and the areas served. That ongoing obligation applies equally to the construction and operation of new gas infrastructure facilities in the Eastern Panhandle.”

The relief sought is a stop workorder until all precautions are taken to protect the environment.

The EQB not only has the authority but the responsibility to maintain the integrity of our environment.

With all the statements above the Appellant prays to the EQB with a motion to review the dismissal of this appeal, and set aside the order granting Mountaineer Gas' motion to dismiss and grant Appellant's motion to proceed with previous scheduled hearings.

The Appellant asks once again, what's the harm to have a hearing to present findings of fact and conclusion of law. Protecting the environment and safety of the residents of West Virginia is the only purpose of the EQB.

Ex. 6 Personal Privacy (PP)

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CERTIFICATE OF SERVICE

I, Ex. 6 Personal Privacy (PP) do hereby certify that I, on this 7th day of November, 2019 served the attached *Motion Seeking Judicial Review, Motion to Set Aside Order Granting Mountaineer Gas' Motion to Dismiss Appeal and Motion to Proceed with Previous Scheduled Hearing* to all parties in Appeal no. 19-07EQB as follows:

By United States Mail, postage prepaid:

Jackie Shultz, Clerk, Original and 12 (twelve)

Environmental Quality Board

601 57th Street, SE

Charleston, WV 25304

Via Email and Priority Mail

Jackie.d.shultz@wv.gov

Jason Wandling and distributed parties

WVDEP – Office of Legal Services

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Harold Ward, Deputy Secretary for Operations

DEP, Water and Waste Management

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Mountaineer Gas Company

P.O. Box 5201

Charleston, WV 25361-0201

First-Class Mail

Ex. 6 Personal Privacy (PP)

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cc:

EPA – Region III

1650 Arch St

Philadelphia, PA 19103

Via – Email

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